

RESPONSE

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REMARKS

Claims 1-24 are pending in the present application. Claims 1-24 were rejected in the Office Action mailed 12/17/04.

Claims 25-30 are added by this Response. Claims 8-9, 14-15, and 21-22 are canceled by this Response. Claims 1-2, 6, 10, 16, 18, and 23 are amended by this Response.

Section 103 Rejections

In the Office Action mailed 12/17/04, the Examiner rejected claims 1-24 as unpatentable over Scholl et al. in view of Pillar. According to the Examiner, the grounds for this rejection were provided earlier in the Examiner's 04/05/2004 Office Action. The applicants respectfully traverse the Examiner's rejection of the claims.

Claim 1 has been amended to recite a wireless communication device "configured to transmit a cellular telephone signal". Support for this amendment can be found in the claims as originally filed.

Scholl describes a satellite telecommunications system provided by Qualcomm. Cellular telephone signals are inferior to satellite telecommunications. Cellular telephone coverage is inferior to satellite telecommunications.

Contrary to the Examiner's statements in prior Office Actions, Scholl and Pillar are completely silent on telephone systems (generally) and cellular telephone systems (in particular). If the Examiner wishes to maintain his rejection of claim 1, we ask that he provide a reference teaching why cellular telephone signals are preferred to satellite telecommunications when used

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in this particular claimed combination. Any generic statements by the Examiner that "cellular telephone signals" or "transmitting cellular telephone signals" were "well known" that (1) are unsupported by a specific published prior art reference that would qualify as a reference under 35 USC 102, AND (2) lack any specific teaching to combine such a written reference with the other elements of the claim, will be challenged. Claims 2-5 depend from claim 1 and are allowable for the same reasons.

Claim 6 has been amended to recite a "wireless communication device comprises a modem and transmitter coupled to the onboard fleet management system, and wherein the transmitter is configured to transmit a cellular telephone signal. Again, neither Scholl or Pillar mention telephones generally nor do they mention cellular telephones specifically.

The limitations in the amendments to claim 6 were previously found in claims 8 and 9, which are now cancelled as duplicative. The Examiner should therefore have already performed a search for those limitations. Should the Examiner devise new grounds for rejecting claim 6 and the claims dependent thereon, those new grounds will make this application an exception to the general rule that all second and subsequent Office Actions be made final. Whether or not the applicants introduce other amendments that do necessitate new grounds for rejections does not change this rule. See MPEP 706.07(a)¹. This also applies to claim 23, which is rewritten in independent form herein.

¹ " Under present practice, *second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is [not] necessitated by applicant's amendment of the claims* nor based on information submitted in an information disclosure statement" Emphasis added.

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Claim 16 has been rewritten in independent form. Claim 16 recites " wherein the step of retrieving inputs from an operator uses includes the step of using a decision tree algorithm to determine decision tree data."

Neither Scholl nor Pillar refer to using a "decision tree algorithm to determine decision tree data." Neither Scholl nor Pillar teach the desirability of using a decision tree algorithm in the step of retrieving inputs from an operator.

The Examiner in the 04-05-2004 Office Action stated that

the claimed decision tree algorithm is well known and has been routinely employed in any data processing systems. It would have been readily apparent to one skilled in the art that such decision tree either has already been used in the pillar [sic] system or would have been obvious to do so to derive decision data and subsequently storing them in a well known character string format as claimed"

First, the Examiner seems to be a bit unsure whether Pillar actually discloses a decision tree or does not disclose a decision tree.² Just to be clear, Pillar does not disclose or suggest decision trees, tree structures or similar logical constructs. Further, the word "decision" and "tree" appear nowhere in Pillar. Even further, and to the extent the Examiner is actually saying that Pillar (the human being, not the reference) may actually have employed a decision tree in an actual physical working device or "System" as the Examiner calls it, any such conjecture is completely irrelevant for purposes of a rejection under 35 USC 103. Finally, a "decision tree" is not inherently disclosed in Pillar. Thus, nothing in Pillar (or Scholl, for that matter) teaches or suggests a decision tree.

² "It would have been readily apparent to one skilled in the art that such decision tree *either has already been used in the Pillar system* or would have been obvious to do so to derive the decision data"

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Second, the Examiner notes that "the claimed decision tree algorithm is well known and has been routinely employed in any data processing system". The applicants respectfully traverse the Examiner's statement that decision trees are well known in the art of vehicle monitoring and control systems. Further, and regardless whether it is well known or not, the Examiner has still not provided any teaching regarding where or whether a decision tree would be used in the Pillar system. Being "well known" or "routinely employed" is no the measure of obviousness or a teaching to combine -- it does not make a limitation, technology, structure or technique a universal substitute or addition to any system or device. An Examiner must always provide a teaching to combine, and his 04-05-04 Office Action (and his latest Office Action) are is completely silent.

Claim 18 has been amended to recite "questions generated according to a predetermined decision tree algorithm" and the arguments regarding decision tree algorithms are applicable to claim 18 as well.

Claim 23 has been amended to include all the limitations of its parent claim, including (among others) "wherein the operator inputs are responsive to at least one computer-generated question, the question generated according to a predetermined algorithm, wherein the operator interface is configured to display a plurality of operator questions, wherein the operator interface is configured to accept responses to the operator questions, and wherein the plurality of operator questions are derived from a decision tree."

Again, the arguments regarding claim 16 are equally applicable to claim 23. The Examiner argues that Scholl discloses "switches" and states that Pillar teaches "questions or prompts" that could substitute for "switches", although no reason making the substitution is taught. Indeed, neither reference teaches or suggests that the switches of Scholl are inadequate

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and need to be replaced. Since Scholl is directed to reducing the amount of information being sent to a home base, it is unclear how asking many questions and thereby creating much more data to be transmitted (remember that Scholl seeks to reduce the data transmitted) will be helpful or beneficial. Further, and as noted above, neither Scholl nor Pillar suggest a decision tree algorithm. Scholl teaches against such an algorithm, since Scholl is directed not to deciding (i.e. diagnosing) a problem, but to merely to packaging and sending all available data in a compact form over a satellite link to a remote diagnosis program. Finally, using prompts or questions (as Pillar mentions) does not inherently disclose a decision tree algorithm.

Finally, decision trees are commonly used to gather a great deal of information in order to solve problems such as diagnosing illnesses. Scholl teaches against solving problems on the vehicle. Scholl teaches sending error codes to a remote diagnosis facility which solves the problems. Scholl therefore teaches away from using decision trees in a computer on the vehicle to solve vehicle problems, and therefore teaches against a decision tree for problem solving.

New Claims

Support for new claim 25 can be found at least in FIGURE 4 and the supporting text. Support for new claim 26 can be found at least in paragraph 17. Support for new claim 27 can be found at least at paragraphs 20 and 27. Support for new claim 28 can be found at least at paragraph 19. Support for new claim 29 can be found at least in FIGURE 2 and supporting text. Support for new claim 30 can be found at least in FIGURE 1 and supporting text.

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CONCLUSION

Should the Examiner maintain his rejections, we ask that he find written support for each of the claim limitations he deems "well known" or "notorious" or "commonly used". We disagree with his sweeping analysis, which is supported only by bare allegation.

If each limitation is indeed so well known, it should be quite easy to find a published reference to that limitation and a teaching to combine.

All the claims are believed to be in condition for allowance, early notification of which is respectfully requested. If the Examiner believes that an interview would advance the allowance of the application he is cordially invited to contact the undersigned at the telephone or e-mail address identified below.

Applicants' undersigned attorney may be reached in our Germantown, Tennessee office by telephone at (901) 309-3068.

Respectfully submitted,

/Stephen Michael Patton #36235/

Date: April 18, 2005

Stephen M. Patton
Reg. No. 36,235

Patton IP
7881 Grove Court East
Germantown, TN 38138

Phone: 901-309-3068
Fax: 901-756-9489
Email: SMPatton@PattonIP.com

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O.Box 1450, Alexandria, VA 22313-1450, on this 18th day of April, 2005.

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Stephen M. Patton

/Stephen Michael Patton #36235/

Name

Signature